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Kevin L. Smith

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of the supreme court,
court of appeals and
tax court

KIRSCH, Judge

Kathleen A. Grothe (“Kathleen”) appeals the trial court’s division of marital property in her marital dissolution with Young Park (“Young”). Specifically, Kathleen raises the following restated issue: whether the trial court abused its discretion in dividing the parties’ marital property.

We vacate and remand.

FACTS AND PROCEDURAL HISTORY

The parties married in November 2001. They did not have any children. In August 2006, Kathleen petitioned to dissolve the marriage. Following the final hearing, the trial court entered its findings of fact and conclusions thereon, dissolving the marriage and dividing the property. The trial court found that there was no significant discrepancy between the parties’ contributions toward the acquisition of marital property, including inheritance and gifts, nor was there a significant difference between the parties’ relative economic circumstances at the time of the disposition of property. The trial court found no evidence that either party dissipated assets.

The trial court concluded, “there are substantial and numerous reasons to rebut the fifty-fifty division of marital assets and allocation of indebtedness as being fair and equitable in the factual circumstances surrounding these parties’ marriage.” *Appellant’s App.* at 14. The reasons cited included: the relative short length of the marriage; the marriage produced no children; Young brought the martial arts business, the commercial property, and the marital residence into the marriage; both parties contributed to the payment of mortgage loan payments, property taxes, insurance, and utilities related to the residence; Kathleen’s greater earning power; Young’s inability to secure private

supplemental health insurance; Young's health-related expenses; Young's inability to acquire future retirement benefits; the parties' agreement to add on to the residence resulting in an \$89,000.00 increase in its value; Kathleen did not substantially participate in the parties' business; and Young established the business in 1967.

The trial court found the total marital assets to be \$880,395.00 and the liabilities were \$25,385.00.

The trial court found that Young rebutted the presumption and awarded the marital assets and liabilities as follows:

Total Assets to Kathleen:	\$331,782.10
Total Debts to Kathleen:	\$17,636.00
Net distribution to Kathleen:	\$314,146.61 or 36% of net marital estate
 Total Assets to Young:	 \$563,488.00
Total Debts to Young:	\$7,749.00
Net distribution to Young:	\$555,739.00 or 64% of net marital estate

The trial court also ordered the parties to retain possession of all of their own personal belongings and ordered them to pay their own attorney fees. Kathleen now appeals.

DISCUSSION AND DECISION

As an initial matter, we note that when, as here, a trial court enters findings of fact and conclusions thereon, we apply a two-tiered standard of review. *Hyde v. Hyde*, 751 N.E.2d 761, 765 (Ind. Ct. App. 2001). We determine first whether the evidence supports the findings, and second, whether the findings support the judgment. *Id.* Under the first tier, we review the trial court's findings for clear error. *Id.* Findings are clearly erroneous if the record lacks any probative evidence to support them. *Id.* When a trial

court enters findings of fact and conclusions thereon *sua sponte*, as it did here, the specific findings control only as to the issues they cover, while a general judgment standard applies to all issues the trial court did not address. *Brinkmann v. Brinkmann*, 772 N.E.2d 441, 444 (Ind. Ct. App. 2002).

Kathleen claims that the trial court's findings do not support its judgment. We agree.

The trial court found that the total value of all assets in the marital estate was \$880,395.00 (finding 16). The marital debts were determined to be \$25,385.00 (finding 17). These findings show the value of the net marital estate was \$855,010.00. Inexplicably, the trial court then found the value of the net marital estate was \$869,010.00 (finding 18).

Compounding its error, the trial court, in its judgment, set aside assets to Young of \$563,488.00 and to Kathleen of \$331,782.10 for a total of \$895,270.10 or \$14,875.10 more than the value it found for the assets in the marital estate.

In finding 28, the trial court found that "there is no significant difference in the earnings ability of either party as it relates to the division of the marital estate." *Appellant's App. at* 12-13. Then, in its conclusion 7(f), the trial court stated that Kathleen had substantially greater earnings than Young. *Id.* at 16.

The trial court found that Young's financial declaration listed his income at \$81,735.16 per year (finding 32) and that his 2005 tax return showed an income of \$11,394.00 (finding 33).

The trial court's finding 23 states that Young had \$77,943.00 in equity in the marital residence at the time of the marriage. Conclusion 7(d), however, states that he had \$92,942.93.

The trial court found the value of the marital residence at time of dissolution was \$239,000.00 in its finding 16, but set out a value of \$253,000.00 in its judgment entry.

Finally, in findings 29 and 30, the trial court found that there was no significant difference between the spouses' acquisition of marital property either during the marriage or prior to the marriage by inheritance or gift. However, in conclusions 7(c) and (d), the trial court stated that Young had brought substantially greater assets into the marriage, including the marital home and the commercial property. Besides being contradictory in making these conclusions, the trial court ignored the substantial property, primarily bank and investment accounts, that Kathleen brought to the marriage.

The evidence must support the findings and the findings must support the judgment. *Hyde*, 751 N.E.2d at 765. Here, they do not. The inconsistencies between the trial court's findings and its conclusions render the trial court's decision clearly erroneous. They also make appellate review impossible. We vacate the trial court's judgment and remand for entry of new findings, conclusions and judgment consistent with this opinion and consistent with each other. In its entry, the trial court shall give due consideration to the contributions of Kathleen of her pre-marital assets and post-marital earnings.

Vacated and remanded.

FRIEDLANDER, J., and BAILEY, J., concur.